



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/915,998 | 07/26/2001 | Andreas Moller | MSE #2635 | 1129 |

7590 05/04/2004

Jerome L. Jeffers, Esq.
Bayer Corporation
P.O. Box 40
Elkhart, IN 46515-0040

EXAMINER

SIEFKE, SAMUEL P

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1743

DATE MAILED: 05/04/2004

h

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,998

Applicant(s)

MOLLER ET AL.

Examiner

Samuel P Siefke

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 02/02/04 have been fully considered but they are not persuasive. Applicant argues, "there is no motivation to combine the teaching of Button and Loikkanen." As the rejection stands now, the rejected claims based on the combination of Button and Loikkanen are proper. Button is used for the sole teaching of a glucose meter cover. Loikkanen in the combination is used to show that that a protective cover will reduce wear and tear on the glucose monitor and also to create an appealing look so as to be more acceptable in the public. Button does not teach just using the audible device for the visually impaired person as stated by the Applicant, it is just an example, see col. 2, lines 5-10. "a visually impaired person **or diabetic** to independently determine there contents of insulin containers." Therefore the device can be used in ways other than just for a visually impaired person.

Applicant argues, "Button does not teach a cover that is detachable with the main glucose meter." See figure 17, it is clear that it is detachable with the meter. See rejection for further detail.

Applicant argues. "Button fails to teach a frame that surrounds a slot for receiving a disposable cartridge located on the edge surface of the glucose meter." Figure 12 shows an outer casing (169) that surrounds the input for the disposable cartridges (col. 9, line 59-col. 10, line 8).

Applicant argues, "neither button nor Loikkanen disclose the element of a gripping member connected with the frame..... And also disagrees with the

Art Unit: 1743

Examiner's position that any of the sides of Button can be a gripping member." It is the Office's position that a gripping member is "to secure and keep a tight hold on" "gripping" as defined by Webster's Dictionary II New Riverside University Dictionary. Button clearly allows for a gripping member because one can grasp the edge of the outer cover and secure and keep a tight hold on with a firm grip.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24, 27 and 30 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **Grip factor** is not disclosed in the specification. The specification only mentions that a gripping means for a user to grip onto the blood meter.

Claim Rejections - 35 USC § 102

Art Unit: 1743

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1-4-17,21-22,24, 27, and 30** are rejected under 35 U.S.C. 102(b) as being anticipated by Button et al. (USPN 5,786,584).

Button discloses a vial and cartridge reading device for a blood glucose monitoring system (col. 3, lines 62-col. 5, line 8) that comprises an outer casing (32) that covers a blood glucose monitoring device. The glucose device slides into the cover provided by the rubber standoffs (col. 4, lines 45-50). The casing provides for a window for viewing the reaction (fig. 1, ref. 29). The glucose device comprises a slot (28) for receiving a disposable cartridge; the cover only covers part of the back and is small contact with the back (fig. 2); a gripping member (can be anyone of the sides). Figure 17 clearly shows that the cover clearly is removable from the glucose sensor along with col. 10, lines 49-62. The Office would like to point out that claim 1, 8, 15 and 22 of the current application requires only that the cover be a frame adapted to receive a glucose meter. The frame is adapted to surround a substantial portion of the edge surface, and the frame forms an opening for viewing at least a portion of the front surface of the glucose meter. Button discloses each and every limitation set for by claim 1, 8, 15, and 22. The outer casing (32) of Button forms a frame (front and back surrounding an object) around a glucose meter that has an open face for viewing

Art Unit: 1743

a monitor (not covered). Figure 12 shows a outer casing (169) that surrounds the input for the disposable cartridges (col. 9, line 59-col. 10, line 8). The frame of Button does not cover a substantial portion of the back. Figure 2 shows that the outer casing only covers the outside edges of the back of the glucose meter. The gripping member as disclosed in claim 10 can be any edge of the outer cover (integral).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1743

Claims **2,3,18-20,23, 25, 26, 28, 29, 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Button et al. (USPN 5,786,584) in view of WO 98/17088.

Button discloses a vial and cartridge reading device for a blood glucose monitoring system as can be seen above.

Button does not teach a cover that includes interchangeable faceplate removable connected with the frame that forms a window, a colored frame to increase visual appearance, or that the cover increases impact resistance.

WO '088 teaches a replaceable decorative part made of plastic that is fitted to a case or frame of an electric appliance in order to give a decorative appeal to the device (abstract; page 4, lines 4-34). '088 also teaches that the cover reduces the scratches and damages (page 4, line 15-21). It would have been obvious to one having an ordinary skill in the art to modify the removable cover of Button in order to give the glucose monitor an appealing look so as to be more acceptable in the public, and also to reduce wear and tear on the glucose monitor (page 2, lines 21-37).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

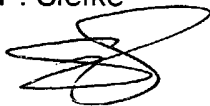
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax

Art Unit: 1743


phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke



April 30, 2004


Jill Warden
Supervisory Patent Examiner
Technology Center 1700